

North Dakota Department of Transportation

DBE NEWSLETTER

— For the May 8, 2020 Bid Letting —



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Quick Tips!



AGC
THE CONSTRUCTION
ASSOCIATION

What is the AGC doing to keep workers safe during the Coronavirus?

Find out more here: <https://workingsafe.agc.org>

Contacts

Civil Rights Division

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The North Dakota Department of Transportation (NDDOT) will consider every request for reasonable accommodation to provide:

- An accessible meeting facility or other accommodation for people with disabilities
- Language interpretation for people with limited English proficiency (LEP)
- Translations of written material necessary to access NDDOT programs and information.

To request accommodations, contact Paula Messmer, Civil Rights Division, NDDOT at 701-328-2978 or civilrights@nd.gov TTY users may use Relay North Dakota at 711 or 1-800-366-6888.



Coronavirus: Who Will Bear the Risk & Cost for Construction Delays?

by Peter Strniste, posted with permission from Consturction Business Owner

As the coronavirus spreads across the globe, its impact continues to disrupt many industries, including construction. Over the last 20 years, the construction industry in the United States has substantially increased its reliance on China as a supplier for all types of materials, including electrical and lighting equipment, elevators and component parts, plumbing fittings and fixtures, and heating, ventilation and air conditioning systems equipment.

Production lines in China are standing still while workers are being quarantined or huddling in place in their homes. Shipping containers with raw materials are backed up in China's ports, and there is no transportation to deliver finished products from factories. These supply-chain shutdowns have already created increased demand for construction materials in the U.S. and have the potential for causing substantial delays and project cost overruns.

Cary Davis, an official with the American Association of Port Authorities, said, "Due to the coronavirus outbreak, cargo volumes at U.S. ports might be down by 20% or more on a year-on-year basis compared to 2019." An executive at national home builder Toll Brothers complained that the virus has already delayed certain lighting parts and small appliances.

While there is no question that the outbreak of the coronavirus in China was unforeseeable, the party who bears the risk and the loss for resulting construction delays will be dictated by the controlling written agreement. The "force majeure" clause must be examined to determine if

the virus outbreak constitutes an excusable delay extending the completion date and excusing the contractor from liability for any applicable liquidated or actual damages. Any provisions governing the contractor's ability to seek compensation for excusable delays also come into play.

The contractor in question would likely be granted a time extension under the American Institute of Architect's (AIA) standard form A201 General Conditions, which contains the following force majeure clause:

8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or Separate Contractor; (2) by changes ordered in the Work; or (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; or (4) by delay authorized by the Owner pending mediation and arbitration; or binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines may, justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. (Emphasis added.)

It would be very difficult for an owner to dispute that the virus outbreak's disruption to the supply chain was somehow within the contractor's control. However, force majeure clauses are often revised from their native form, transferring the risks of the unknown to the contractor. For example, the following force majeure clause appeared in an agreement recently presented by a large developer to a contractor for execution:

Delay. Contractor shall take all necessary actions required to remedy any delay due to the fault of Contractor or anyone furnishing labor, materials or equipment under Contractor, including, without limitation, providing additional forces to perform the Work, or working overtime at Contractor's sole cost and expense. Owner shall also have the right to supplement Contractor's forces, without termination of this Agreement, in the event Contractor fails to take the measures set forth above for curing Contractor's delay in performing the Work, the cost of which shall be deducted from any amounts otherwise due Contractor hereunder. Contractor shall be responsible to Owner for damages resulting from delay caused by Contractor or anyone furnishing labor, materials or equipment under Contractor. Contractor shall be entitled to a time extension for all delays in the critical path activities of the Work caused by Owner, or other events beyond the reasonable control of Contractor, and such extension of time shall constitute Contractor's sole and exclusive remedy for damages caused by such delay.

This provision does not provide the contractor with any right to a time extension or compensation for delays relating to disruptions in the supply chain as a result of the virus. Placing aside the contractor's ability to recover its costs for such delays, without a time extension, the contractor could also be subject to liquidated damages or the owner's actual damages.

Even if a time extension is granted, whether it is compensable will turn on whether the contract has

a “no damage for delay” provision or other clauses limiting the contractor’s compensation for delays. Many such clauses will limit the contractor’s compensation for delays to its direct general condition costs or to an agreed-upon-in-advance unit price for daily general condition costs.

A strategy for limiting delays from the outbreak may be to try and substitute materials or equipment manufactured in China with products made in the U.S. Demand for these substituted materials already has already driven up costs. Standard form construction contracts permit substitutions under certain circumstances where there is also a cost savings to the owner. As such, any increased costs for a substituted product are usually the sole responsibility of the contractor.

For example, the AIA A201 General Conditions permit the contractor to make substitutions only with the consent of the owner, after evaluation by the architect and in accordance with a change order or construction change directive, which would be issued at the owner’s discretion.

A contractor may attempt to seek compensation for increased costs associated with the high demand for specified materials or for a proposed substitute. These requests are at the owner’s discretion unless there is a price-escalation clause permitting recovery for such costs.

Although there is no provision in the A201 providing the contractor with a right to recover escalation costs, the Associated General Contractors (AGC) ConsensusDocs cost-adjustment clause, § 200.1, Time and Price Impacted Material Amendment 1 (2007, Revised 2011), is a good example of a cost-adjustment clause permitting such recovery.

With the AGC clause, the parties agree upon baseline prices for certain materials when the contract is signed. If market prices increase, either party would be entitled to an equitable adjustment. The contractor would also be entitled to an extension of time and payment for costs associated with any construction delays.

Whether you are negotiating a contract for a new project or in the middle of construction, it would be wise to consider who will bear the risks and costs associated with the still-evolving coronavirus.

Advertisements

Newsletter advertisements are due to the Civil Rights Office Fifteen (15) Business days prior to each bid opening by 12:00p (CT):

- **Thursday, May 28, 2020** (for June 12, 2020 Bid Opening)
- **Thursday, July 23, 2020** (for August 7, 2020 Bid Opening)

Submit the required information online at: <https://apps.nd.gov/dot/cr/csi/login.htm>

Quoting opportunities

May 8, 2020 bid opening at 09:30 am

BECHTOLD PAVING INC. - 5140 HWY. 2 E., MINOT, ND 58701, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 21 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. BECHTOLD PAVING INC. will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to bechtoldquotes@minot.com or fax your quotes to 701-839-2367. To speak to someone in our office regarding quoting please contact Clarey Tryhus at 701-852-1634. Any and all disadvantaged businesses are encouraged to submit a quote. BECHTOLD PAVING INC. is an Equal Opportunity Employer.

BITUMINOUS PAVING, INC. - PO BOX 6, ORTONVILLE, MN 56278, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 2, 17, 28, 31 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. BITUMINOUS PAVING, INC. will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to billb@bpimn.com or fax your quotes to 320-273-2120. To speak to someone in our office regarding quoting please contact Bill Bajari at 320-273-2113. Any and all disadvantaged businesses are encouraged to submit a quote. BITUMINOUS PAVING, INC. is an Equal Opportunity Employer.

BORDER STATES PAVING, INC. - PO BOX 2586, FARGO, ND 58108, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 17, 18, 26, 29, 31 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. BORDER STATES PAVING, INC. will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to quotes@borderstatespaving.com or fax your quotes to 701-237-0233. To speak to someone in our office regarding quoting please contact Korey Bender at 701-237-4860. Any and all disadvantaged businesses are encouraged to submit a quote. BORDER STATES PAVING, INC. is an Equal Opportunity Employer.

CENTRAL SPECIALTIES INC. - 6325 COUNTY ROAD 87 SW, ALEXANDRIA, MN 56308, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 3, 5, 6, 7, 14, 15, 16, 17, 21, 23, 25, 26, 29, 31 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. CENTRAL SPECIALTIES

INC. will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to quotes@centralspecialties.com. To speak to someone in our office regarding quoting please contact Ryan Minnerath at 320-762-7289. Any and all disadvantaged businesses are encouraged to submit a quote. CENTRAL SPECIALTIES INC. is an Equal Opportunity Employer.

EDLING ELECTRIC, INC - PO BOX 1456, BISMARCK, ND 58502, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 22 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. EDLING ELECTRIC, INC will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to james@edlingelectric.com or fax your quotes to 701-255-2835. To speak to someone in our office regarding quoting please contact James Ruud at 701-595-7570. Any and all disadvantaged businesses are encouraged to submit a quote. EDLING ELECTRIC, INC is an Equal Opportunity Employer.

KNIFE RIVER MATERIALS - PO BOX 40, BEMIDJI, MN 56619, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 2, 17, 18, 20, 21, 25, 26, 31 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. KNIFE RIVER MATERIALS will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to subquotes@kniferiver.com. To speak to someone in our office regarding quoting please contact Josh Weickert at 218-751-5413. Any and all disadvantaged businesses are encouraged to submit a quote. KNIFE RIVER MATERIALS is an Equal Opportunity Employer.

MARK SAND & GRAVEL CO. - PO BOX 458, FERGUS FALLS, MN 56538, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 16, 17, 31 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. MARK SAND & GRAVEL CO. will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to estimator@marksandgravel.com or fax your quotes to 218-736-2647. To speak to someone in our office regarding quoting please contact JUSTIN RODEMAN at 218-736-7523. Any and all disadvantaged businesses are encouraged to submit a quote. MARK SAND & GRAVEL CO. is an Equal Opportunity Employer.

MAYO CONSTRUCTION COMPANY, INC. - BOX 310 13960 HWY 5 WEST, CAVALIER, ND 58220, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 2, 7, 13, 17, 18, 21, 25, 26, 31 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. MAYO CONSTRUCTION COMPANY, INC. will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email

your quotes to subquotes@mayoconst.com or fax your quotes to 701-265-8044. To speak to someone in our office regarding quoting please contact Greg Mayo at 701-265-8438. Any and all disadvantaged businesses are encouraged to submit a quote. MAYO CONSTRUCTION COMPANY, INC. is an Equal Opportunity Employer.

NORTHERN IMPROVEMENT COMPANY - 4000 12TH AVENUE NORTH, FARGO, ND 58102, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 3, 14, 23 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. NORTHERN IMPROVEMENT COMPANY will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to subquotes@nicnd.com. To speak to someone in our office regarding quoting please contact Bruce Thompson at 701-223-6695. Any and all disadvantaged businesses are encouraged to submit a quote. NORTHERN IMPROVEMENT COMPANY is an Equal Opportunity Employer.

R.J. ZAVORAL & SONS, INC. - PO BOX 435, EAST GRAND FORKS, MN 56721, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 25, 31 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. R.J. ZAVORAL & SONS, INC. will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to SUBQUOTES@RJZAVORAL.COM or fax your quotes to 218-773-6423. To speak to someone in our office regarding quoting please contact JOE ZAVORAL at 218-773-0586. Any and all disadvantaged businesses are encouraged to submit a quote. R.J. ZAVORAL & SONS, INC. is an Equal Opportunity Employer.

SCHERBENSKE INC. - 2511 17TH STR SE, JAMESTOWN, ND 58401, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 14, 15, 16, 20, 29 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. SCHERBENSKE INC. will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to estimating@scherbenskeinc.com or fax your quotes to 701-252-1809. To speak to someone in our office regarding quoting please contact Pam Szarkowski at 701-252-8608 extension 108. Any and all disadvantaged businesses are encouraged to submit a quote. SCHERBENSKE INC. is an Equal Opportunity Employer.

STRATA CORPORATION - PO BOX 13500, GRAND FORKS, ND 58208, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 2, 14, 16, 17, 20, 22, 25, 26, 31 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. STRATA CORPORATION will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to quotes@stratacorporation.com. To speak to someone in our office regarding quoting please contact Robert Martens at 701-741-4239. Any and all

disadvantaged businesses are encouraged to submit a quote. STRATA CORPORATION is an Equal Opportunity Employer.

TI-ZACK CONCRETE, INC. - 39352 221ST AVE, LE CENTER, MN 56057, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 3, 7, 23 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. TI-ZACK CONCRETE, INC. will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to Estimating@TiZack.com. To speak to someone in our office regarding quoting please contact Chris Hartwig at 952-460-0023. Any and all disadvantaged businesses are encouraged to submit a quote. TI-ZACK CONCRETE, INC. is an Equal Opportunity Employer.

WINN CONSTRUCTION INC - PO BOX 1141, DICKINSON, ND 58602, is seeking quotes on any and all items or materials within the scope of the project(s) on job number(s) 23 for the May 8, 2020 NDDOT Bid Opening to be held at 09:30 AM. We will assist you in interpreting plans and specifications, preparing proposals, provide advice to obtain bonding and insurance, project scheduling, pit information (location, length of haul, type of road, etc.) method of measurement (seeding by the mile or acre, hauling by the ton-mile or by the hour, etc.), expected overtime, payment schedule, items of work included in the quote or any other project related issues. WINN CONSTRUCTION INC will be accepting quotes up until deadlines as specified in the DBE Special Provisions for this letting. You can email your quotes to michaelm@winconstructioninc.com. To speak to someone in our office regarding quoting please contact Michael Molina at 701-483-1190. Any and all disadvantaged businesses are encouraged to submit a quote. WINN CONSTRUCTION INC is an Equal Opportunity Employer

Welcome new DBEs!

We have many new firms that joined the DBE program in the past few months. Please welcome the following new businesses. If you would like more information on the services they provide, please refer to the DBE Directory at <https://dotnd.diversitycompliance.com/>

Missouri Valley Wattles

Straw Wattles, Silt Fence, Geotextile Fabric

Located in Mandan, ND

kthomas82@bis.midco.net

Yahna, LLC

Located in West Fargo, ND

www.yahnallc.com

Sykes Energy Transport

Trucking firm hauling dirt and gravel for highway projects

Located in Dickinson, ND

SykesEnergyTransport@gmail.com



Upcoming Events

**May
07**

Navigating Long-Term Uncertainty and the Aftermath of Disruption (Live Webinar)

Thursday, May 7, 2020, 1p-2:30p CST

[Learn more >](#)

**May
12**

ACTIVATE Women: Cutting Edge Marketing

Tuesday, May 12, 2020, 11:45a-1:15p CDT

Center for Technology and Business, Bismarck ND

[Learn more >](#)

**Mar
12**

**Fargo/Moorhead/West Fargo Chamber Event
Workforce Transformation: Navigating the New Normal**

Wednesday, May 13, 2020, 11:30a-1pm

Courtyard by Marriot, Moorhead MN

[Learn more >](#)

**Oct
14**

First Annual ND Transportation Forum

Wednesday, October 14, 2020, 8am-5pm

Radisson Hotel, Bismarck ND

[Learn more >](#)

Training Resources



**North Dakota Procurement
Technical Assistance Center**
www.ndptac.org



**North Dakota District
SBA Office**
www.sba.gov/offices/district/nd/fargo



**North Dakota Local Technical
Assistance Program**
www.ndltap.org



**Center for Technology
& Business**
[www.trainingnd.com/
technology-training](http://www.trainingnd.com/technology-training)



SBA online training courses
www.sba.gov/learning-center



**Transportation Learning
Network**
www.translearning.org



**ND Small Business
Development Centers**
www.ndsbdc.org



**Veterans Business Outreach
Center of the Dakotas**
www.und.edu/dakotasvboc/



**Project Solutions Inc.
DBE Training Videos**
[www.gotostage.com/channel/
nddot-dbe-training](http://www.gotostage.com/channel/nddot-dbe-training)